

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

The County of Madison,	:	
Petitioner,	:	
	:	
v.	:	
	:	
CSX Transportation Inc., a Florida Corporation; and	:	T23-0037
the State of Illinois Department of Transportation,	:	
Division of Highways, and the Township of Collinsville	:	
Road District in Madison County,	:	
Respondents.	:	
	:	
Petition for an Order authorizing construction of CSX	:	
Transportation, Inc.'s crossings, designated as AAR/	:	
DOT #546570X, milepost 224.50 and AAR/DOT	:	
#546569D, milepost 224.15 near the City of	:	
Collinsville, Madison County, Illinois.	:	

AGREED ORDER

By the Commission:

On April 28, 2023, Madison County (County or Petitioner) filed the above-captioned verified petition with the Illinois Commerce Commission (Commission) naming as Respondents CSX Transportation, Inc. (CSX), the Illinois Department of Transportation (Department or IDOT), and Collinsville Township Road District (Road District) seeking authority to construct a new bridge, designated as AAR/DOT# 973711F at CSX milepost QS-224.34, to carry a new alignment of Lebanon Road over the CSX tracks near Collinsville, Madison County, Illinois. The new bridge over the CSX tracks on the re-aligned Lebanon road will be necessary for, and in conjunction with, the closure and elimination of functionally obsolete underpasses on the current Lebanon Road (AAR/DOT #546570X, milepost QS-224.50) and Lockmann Road (AAR/DOT #546569D, milepost QS-224.15).

On June 13, 2023, a Hearing was held before a duly appointed Administrative Law Judge (ALJ) via audio-visual teleconference. John Gilbert, Madison County Assistant State's Attorney, appeared on behalf of the Petitioner, and provided the testimony of Adam Walden, the Madison County Engineer of highways. CSX, IDOT and the Road District were each represented by counsel. A Railroad Safety Specialist from appeared on behalf of the Commission's Rail Safety Section (Staff). At the conclusion of the Hearing, the matter was marked "Heard and Taken."

PETITIONER'S EVIDENCE

Petitioner presented a general overview for the project to re-align Lebanon Road and construct a bridge over the CSX's tracks ("the Project"), which was admitted at Hearing as Petitioner's Exhibit 1. Within the limits of the Project, the CSX last reported that 13 trains per day operate on two (2) tracks at a maximum timetable speed of 60 miles per hour. CSX's tracks run generally in an east/west direction at the Project location. The County requests approval to construct the new bridge carrying Lebanon Road over the CSX's tracks to be substantially consistent with the design plans admitted as Petitioner's Exhibits 2 and 3, and to meet the minimum clearance requirements set forth in 92 Ill. Admin. Code, Section 1500.

Upon completion of the Project, emergency vehicle access, and school bus route safety will be greatly improved in the area, and the roadway will safely accommodate increasing traffic in the area. The County projects that the average daily traffic on Lebanon Road in the area of the Project will increase from the current 2,300 vehicles per day to approximately 3,150 vehicles per day by the year 2032.

The estimated total cost for the Project is \$20,635,000. Of this amount, the County estimates that \$15,605,000 is eligible for reimbursement from the Grade Crossing Protection Fund (GCPF). The County is requesting that the Commission allow the GCPF to be utilized to reimburse eligible costs, in an amount not to exceed \$15,605,000. The Road District has already paid \$550,000 for right-of-way needed to construct the Project and is not able to contribute any additional funds toward initial construction of the Project. The County has budgeted \$4,480,000 to cover the rest of the Project Costs, including any GCPF-ineligible items within the Project, which will be the responsibility of the County. The County presented a proposed Cost Division Table, prepared in coordination with Staff and admitted at the Hearing as Petitioner's Exhibit 4.

The final plans for the Project are almost complete, and land acquisition and other necessary agreements are underway. The County reported that the last remaining land acquisition is to obtain necessary easements from CSX. The current target for construction letting is September 2023 and the County requests that the Commission approve a target completion date of November 30, 2025, for the opening of the new Lebanon Road overpass to public travel, and closure of the existing underpasses on Lebanon and Lockmann Road. Upon completion of the Project, the Road District will be responsible for maintenance of the new Lebanon Road CSX overpass and the other components of the Project.

RESPONDENT ROAD DISTRICT'S POSITION

The Road District has no objection to the construction of the Project or acceptance of future maintenance of the components comprising the Project, consistent with Petitioner's Exhibits 1, 2, 3 and 4.

RESPONDENT CSX'S POSITION

CSX has no objection to the construction of the new Lebanon Road overpass,

provided that, as a condition precedent to the initiation of any work impacting CSX, that CSX and the County execute a written Construction Agreement, as well as any easements required by CSX for the project.

RESPONDENT DEPARTMENT'S POSITION

The Department has no objection to the Petition or the construction and cost division of the Project, consistent with Petitioner's Exhibits, 1, 2, 3 and 4.

STAFF'S POSITION

Staff supports the Project and recommends that assistance from the GCPF be authorized to reimburse the Petitioner in an amount not to exceed \$15,605,000 of eligible costs associated with the Project, consistent with the plans and cost division table admitted as Petitioner's Exhibits 1, 2, 3 and 4.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the entire record, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) Petitioner, Madison County, Illinois, is a body corporate and politic of the State of Illinois;
- (3) Respondent, CSX Transportation, Inc., is a rail carrier engaged in the transportation of either or both property and passengers for hire in the State of Illinois, as defined by the ICTL, 625 ILCS 5/18/c-1104(30);
- (4) Respondent, Illinois Department of Transportation, is a Department of the State of Illinois which exists by virtue of the laws of the State of Illinois;
- (5) Any recitals of fact and conclusions of law contained in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (6) It is in the interest of public safety and convenience that the petitioner County should construct a new overpass of the CSX tracks, along with connecting roadway(s), substantially consistent with the plans admitted as Petitioner's Exhibits 1, 2 and 3, to carry a re-aligned Lebanon Road over the CSX tracks, designated as AAR/DOT# 973711F at CSX milepost QS-224.34, located near Collinsville, Madison County, Illinois;
- (7) The overall construction cost of the Project is estimated at approximately \$20,635,000. It is fair and reasonable that the Secretary of the Illinois Department of Transportation, through the GCPF of the Motor Fuel Tax Law, should be directed to pay an amount not to exceed \$15,605,000 to

reimburse Madison County for eligible project costs. Madison County should be responsible for the remainder of the Project's initial construction costs, in accordance with the Cost Division Table admitted as Petitioner's Exhibit 4;

- (8) Madison County should be the lead agency for the construction of the Project;
- (9) Upon completion of the Project, Collinsville Township Road District should be the sole owner of the new Lebanon Road overpass, connecting roadway(s), and all other elements of the project, with responsibility for future maintenance and costs thereof;
- (10) The new Lebanon Road overpass should be open to public travel and the former Lebanon and Lockmann Road underpasses should be closed to public travel by November 30, 2025;
- (11) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 of the Law require each "person" as defined by 5/18c-1104 to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions;
- (12) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request;
- (13) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders;
- (14) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe;
- (15) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within

the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission, that the Petitioner, County of Madison is authorized to construct a new overpass of the CSX tracks, along with connecting roadway(s), substantially consistent with the plans admitted as Petitioner's Exhibits 1, 2 and 3, to carry a re-aligned Lebanon Road over the CSX tracks, designated as AAR/DOT# 973711F at CSX milepost QS-224.34, located near Collinsville, Madison County, Illinois.

IT IS FURTHER ORDERED that the Secretary of the Illinois Department of Transportation through the Grade Crossing Protection Fund of the Motor Fuel Tax Law is directed to pay an amount not to exceed \$15,605,000 to reimburse eligible project costs. The County of Madison will be responsible for all remaining project costs and those not eligible for reimbursement from the Grade Crossing Protection Fund.

IT IS FURTHER ORDERED that eligible categories for reimbursement from the Grade Crossing Protection Fund shall include: Preliminary Engineering, Right of Way Acquisition, Utility Relocation, Construction Contract, Construction Engineering, and Railroad Force Account/Flagging. Materials for additional bridge spans and piers for structures over rivers, streams, flood-plains and waterways located within a project's limits traditionally have not been considered eligible costs for GCPF reimbursement, unless the additional spans and piers are also located on or over a railroad right-of-way. GCPF percentages for each category can be adjusted as needed between IDOT and the County to reimburse the County for Preliminary Engineering to offset any ineligible Construction items.

IT IS FURTHER ORDERED that all bills for the work outlined in this Order authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Illinois Department of Transportation, Region 5 Engineer, District 8 Attn: Engineer of Local Roads and Streets, 1102 EASTPORT PLAZA DRIVE COLLINSVILLE, ILLINOIS 62234. Upon review and approval of the bills, personnel from District 8 will submit an invoice to the Fiscal Control Unit, Bureau of Local Roads and Streets, Illinois Department of Transportation, 2300 S. Dirksen Parkway, Springfield, IL 62764. All bills shall meet the minimum documentation requirements set in the following Ordering paragraph. All bills will be paid in accordance with the State Prompt Payment Act as currently enacted (Illinois Compiled Statutes, 30 ILCS 540/).

IT IS FURTHER ORDERED that for all work authorized in this Order for reimbursement from the Grade Crossing Protection Fund, the County shall assure that sufficient documentation for all bills is made available to the Department. The minimum documentation that must be made available is outlined below:

- a) Labor Charges (including additives) - Copies of employee work hours charged to the project.
- b) Equipment Rental - Copies of rental agreements for the equipment used, including the rental rate; and the number of hours the equipment was used on the project.

- c) Material - An itemized list of all materials purchased and installed at the crossing location. If materials purchased are installed at multiple crossing locations, a notation must be made to identify the crossing location.
- d) Engineering - Copies of employee work hours charged to the project.
- e) Supervision - Copies of employee work hours charged to the project.
- f) Incidental Charges - An itemized list of all incidental charges along with a written explanation of those charges.
- g) Service Dates - Invoice shall include the beginning and ending date of the work accomplished for the invoice.
- h) Final or Progressive - Each invoice shall be marked as a Progressive or a Final Invoice, as applicable.
- i) Reference Numbers - Each invoice shall include the AAR/DOT number, the ICC Order number and the state job number when federal funds are involved.
- j) Locations - Each invoice shall show the location, with the street name and AAR/DOT crossing inventory number.
- k) Travel – Each invoice shall include copies of all costs incurred, such as lodging, meals, per diem, rates and totals. Rail carriers shall provide an electronic copy of its current Rail Carrier Travel Policy. Reimbursement of travel costs shall be in accordance with State of Illinois travel regulations under 9 Illinois Administrative Code part 3000 and appendices. Any proposal or attempt to use an alternative travel reimbursement method must be reviewed and approved by the Department prior to travel.

Reimbursement of labor additives will be limited to only the most current direct labor additives, small tools additives, equipment additive rate, if so developed, and public liability/property damage liability insurance rates as audited and approved by a cognizant State agency and the Federal Highway Administration. Indirect overhead or general and administrative expenses, or those expenses which may be classified as such under generally accepted accounting principles, are not eligible for reimbursement on this project. Surcharges will be subject to review and approval by the Department.

IT IS FURTHER ORDERED that the Department shall send a copy of all invoices to the Director of Processing and Information, Transportation Bureau of the Commission. All bills shall be submitted no later than twelve (12) months from the completion date specified in the Commission Order approving this Agreement, or any Supplemental Order(s) issued for the project. The final invoice for expenditures from each party shall be clearly marked "Final Invoice". The Commission shall, at the end of the 12th month from the completion date specified in this Commission Order, or any Supplemental Order(s) issued for this project, conduct a review to determine if any unused assistance from the GCPF should be de-obligated. Upon completion of the review, the Commission shall notify the Department to de-obligate all residual funds accountable for installation costs for this project. Notification may be by regular mail, electronic mail, fax, or phone.

IT IS FURTHER ORDERED that the County of Madison will reimburse CSX Transportation, Inc. for all reasonable costs and expenses associated with the Project, per an Overpass Agreement between CSX and the local highway authorities.

IT IS FURTHER ORDERED that no construction work shall be undertaken on CSX Transportation, Inc. property, or that impacts CSX, until a signed Construction Agreement between the County and CSX is in full force and effect and until all property rights necessary for the Project have been acquired. Any Party or Staff may file a Petition seeking a Status Hearing herein regarding timeliness of compliance with the conditions precedent of the required Construction Agreement and/or acquisition of required real estate interests.

IT IS FURTHER ORDERED that Collinsville Township Road District shall take full ownership of the new Lebanon Road overpass and associated Project elements upon completion of Project construction, and be responsible for all future maintenance and the costs thereof.

IT IS FURTHER ORDERED that all work shall be completed by November 30, 2025.

IT IS FURTHER ORDERED that the County of Madison, shall at six (6) month intervals from the date of this Order until the Project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the progress it has made toward completion of the work herein required. Each progress report shall include the Commission Order number, the Order date, the Project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for management of the project.

IT IS FURTHER ORDERED that the County of Madison shall file written notice with the Director of Processing of the date this Project is completed. This notice shall be filed within five (5) days after the completion date.

IT IS FURTHER ORDERED that Madison County in coordination with CSX Transportation, Inc., shall file with the Transportation Bureau's Director of Processing and Information, within three (3) months after the completion of the work required under this Order, a fully updated copy of the United States Department of Transportation Inventory Form (#6180.71).

IT IS FURTHER ORDERED that any person making a Request for Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an Extension of Time which exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to

complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final Order subject to the Administrative Review Law.

By Order of the Commission this 29th day of June 2023.